Ng Siew Choo v Tan Kian Choon

HIGH COURT (SINGAPORE) — SUIT NO 1801 OF 1987
YONG PUNG HOW J
16 MARCH 1990

Damages (Personal Injury or Death) — Dependency — Quantification — Principles to be applied — Deceased working in family arrangement — Services contributed reducible to money value — Civil Law Act (Cap 30, 1970 Ed), ss 8 & 12 — Intestate Succession Act (Cap 146, 1985 Ed), s 7 r 5

Civil Procedure — Assessment of damages — Review of registrar's assessment — Whether wrong principles of law acted on — Whether award entirely erroneous

On 24 July 1987, the plaintiff, the sister and administratrix of the estate of the deceased, brought an action for the benefit of the estate and the mother of the deceased. Upon obtaining interlocutory judgment, the plaintiff was awarded damages of $37,800 on the estate's claim, the dependency claim being dismissed. The plaintiff appealed against the decision of the registrar claiming that the deceased helped his mother in the running of an ice-water stall prior to his death and the loss of his help caused her to lose the stall and the income therefrom. The plaintiff also appealed against the quantum of the award in the estate's claim.

Held, allowing the appeal against dismissal of the dependency claim and dismissing the appeal on the estate's claim:

(1) The cause of action arose before 1987 and is therefore governed by the Civil Law Act (Cap 30, 1970 Ed) and not the Civil Law Act (Cap 43, 1988 Ed).

(2) The principle upon which the court reviews the assessment of damages is to consider if the trial judge acted on wrong principles of law or that the amount awarded was an entirely erroneous estimate. In the instant case, the multiplicand, multiplier and surplus applied by the registrar could not be challenged and the appeal against the award in the estate's claim failed.

(3) In assessing the loss of dependency under s 12 of the Civil Law Act (Cap 30, 1970 Ed), the court could consider if there was a reasonable expectation of pecuniary benefit to the parent and therefore of prospective loss from the death.

(4) In the present case, the working relation of the deceased and his mother was not an employer-employee relationship, but a family arrangement. The deceased must, therefore, at the date of his death, be considered to be contributing services to his mother which were reducible to money value and were lost to her by his death. When assessing the amount of damages to be awarded, the court should take into account the likelihood of the deceased getting married and the contribution being consequently reduced.

(5) A sum of $33,600 was awarded in respect of the mother's claim for dependency. This award would be reduced by the amount received by her as a beneficiary of the estate under s 7 and r 5 of the Intestate Succession Act (Cap 146, 1985 Ed).

Cases referred to

1 *Flint* v *Lovell* [1935] 1 KB 354 (folld)
2 *Chan Heng Wah & Anor* v *Peh Thiam Choh* [1988] 1 MLJ 74 (folld)
3 *Taff Vale Railway Co* v *Jenkins* [1913] AC 1 (folld)
4 *Barnett* v *Cohen* [1921] 2 KB 461 (refd)
5 *Wathen* v *Vernon* [1970] RTR 471 (refd)
6 *Kandalla* v *British Airways Board* [1980] 1 All ER 341 (refd)
7 *Lee Sai Cheong* v *Wan Lim Cheong* [1962] MLJ 259 (refd)
8 *Hassan bin Mohamad & Anor* v *Teoh Kim Seng* [1987] 1 MLJ 328 (refd)
9 *Dolbey* v *Goodwin* [1955] 2 All ER 166 (refd)

Legislation referred to

Civil Law Act (Cap 30, 1970 Ed) ss 8, 12
Intestate Succession Act (Cap 146, 1985 Ed) s 7 r 5

Shue Min Ngian for the plaintiff.
TS Tan for the defendant.

Cur Adv Vult

Yong Pung How J: On 3 June 1986, Ng Choon Kiat ('the deceased') was the front seat passenger in a motor car driven by the defendant, when the car mounted the pavement and collided with a tree. The defendant was killed. Because the cause of action arose before 1987, any claim arising from it would not be governed by the present Civil Law Act (Cap 43, 1988 Ed), but by the Civil Law Act (Cap 30, 1970 Ed) ('the Act'), to which the references in this judgment will be made.

On 24 July 1987, the plaintiff, who is a sister of the deceased, as the administratrix of the estate of the deceased, brought this action for the benefit of the estate under s 8 of the Act, and for the benefit of the mother of the deceased as his dependant under s 12 of the Act, alleging that the accident was caused by the negligence of the defendant. On 3 August 1987, the defendant delivered a defence admitting negligence, but denying that the plaintiff had suffered any damage, loss or expense.

On 25 March 1988, the plaintiff obtained an order under O 27 r 3 for interlocutory judgment to be entered upon this admission of liability, and for damages to be assessed, with costs to be taxed. On 2 June 1989, the registrar awarded general damages of $37,800 on the estate's claim, based on a multiplicand of $600 per month, a multiplier of 15 and an available surplus of 35%. The registrar dismissed the mother's claim for dependency. By consent, damages of $6,500 were awarded for loss of expectation of life, and special damages of $3,000 were awarded for funeral expenses and $750 for probate expenses. The plaintiff has appealed against the award on the estate's claim, and against the dismissal of the mother's claim for dependency. The appeal on the estate's claim which is based on the multiplicand has not been pressed, and the main thrust of the appeal has been directed towards the mother's claim for dependency.

The deceased was 22 years old at the time of his death. He was then a hawker, and, together with an elder sister, Choon Lan, and a younger sister, Beng Choo, was helping their mother, Lee Shok Koon, to run an ice-water stall. The licence for the stall was in fact in the name of their father, Ng Kim Bee, to whom the Housing and Development Board had granted the licence on 17 May 1979. The

father had left the family some time in 1980, and had not thereafter either maintained the family or been involved in the running of the stall. After the father's departure, it was run by the mother and the elder sister. After completing his Secondary 4 level at school, the deceased helped at the stall for about a year before doing his national service. On completing his national service, the deceased returned to work full-time at the stall with the elder sister. The younger sister also helped at the stall after school. By that time, their mother's attendance at the stall was reduced to only one to two hours per day.

The stall appears to have been a fairly successful business. Although, in the nature of such businesses, no accounts are kept, the mother claimed that in the periods when the deceased was working at the stall, before and after his national service, the gross takings were more than $6,000 per month. She paid salaries to her children: $400 per month to the deceased before he went for his national service, and $600 per month after he returned; and $500 per month to each of the two sisters. No Central Provident Fund contributions were paid for any of them. After deducting other expenses, the stall would turn in a net profit of $2,000-$3,000 per month, which she kept for herself. Her bank statements showed that she was depositing on average about $1,000 per month in the period between 1984 and 1986.

In 1984, the mother had approached the Housing and Development Board to transfer the stall licence from the father to the deceased. The father had consented to this. The application was turned down by the Board, however, as the deceased was then a minor. After the death of the deceased, the father claimed back the stall. The mother thought that he had done this probably because he had to support his other family, but that he would not have done so if the deceased had been alive and was still running the stall. She felt no rancour about this particular aspect of the matter because, even if the father had not taken back the stall, she would have had difficulty in running it, without the deceased.

Estate's claim

It might be simpler if I deal first with the appeal on the estate's claim. The principle on which a court reviews the assessment of damages is well settled. In *Flint* v *Lovell*,[1] in a statement of the law which has often been cited, Greer LJ said:

> I think it right to say that this court will be disinclined to reverse the finding of a trial judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a lesser sum. In order to justify reversing the trial judge on the question of amount of damages, it will generally be necessary that this court should be convinced either that the judge acted upon some wrong principle of law, or that amount awarded was so extremely high or so very small as to make it, in the judgment of this court, an entirely erroneous estimate of the damages to which the plaintiff is entitled.

In this action, it was contended by the plaintiff that the appropriate multiplicand should have been fixed by the registrar at a higher level than $210 per month. The figure of $210 per month was deduced by the plaintiff from the multiplicand of $7,200 and the available surplus of 35% which were determined by the registrar. The determination of the loss of future earnings during the so-called 'lost years' must necessarily take into account not only a fair and reasonable assessment of what the net future earnings might be, but also the multiplier to be applied to arrive at the final figure of loss. In doing so, it is also necessary to bear in mind that earnings are subject to all the vagaries of life. In this case, taking all the usual considerations into account, a determination of a multiplicand of $7,200 and a multiplier of 15 could not, in my judgment, be open to challenge by the plaintiff.

The available surplus for the estate is what is deemed to have remained after deducting the deceased's living and other personal expenses from his net earnings. In *Chan Heng Wah & Anor* v *Peh Thiam Choh & Anor*,[2] the Court of Appeal came to the conclusion, after reviewing a number of leading authorities on the subject, that the available surplus in that case should be 40% of the net prospective earnings. An important factor which was taken into consideration by the court was the existence in Singapore of the scheme of enforced savings provided under the Central Provident Fund Act. In the present case, no Central Provident Fund contributions were paid for the deceased, and it is reasonable to come to the conclusion that this would continue to be so, if he had not been killed. Having regard to this, the available surplus should not be determined at more than the 35% determined by the registrar. Accordingly, the appeal against the registrar's award on the estate's claim must therefore fail.

Mother's claim

Section 12 of the Act provided for compensation to the family of a person for loss occasioned by his death. Subsection (2) provided that:

> Every such action shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death has been so caused and shall be brought by and in the name of the executor of the person deceased.

Subsection (3) provided that:

> In every such action the court may give such damages as it thinks proportioned to the loss resulting from such death to the parties respectively for whom and for whose benefit such action is brought.

By sub-s (11), 'parent' was defined to include the mother of the deceased. Although in practice most claims under this section were necessarily brought by a widow or widower on behalf of herself or himself and their children,

claims under this section could equally be brought by a parent of a deceased son or daughter for loss resulting from such death.

On the evidence, the plaintiff in this action contended that the mother was very much dependent in fact on the services of the deceased. If the deceased had not been killed, the father would not have taken back the stall, the deceased would still be running it, it would still be profitable, and the mother would still be receiving the net proceeds from it. The plaintiff's counsel contended that the true measure of dependency was $2,500 per month which should be the multiplicand, to which an appropriate multiplier should be applied.

The defendant contended that there was no evidence that the mother was dependent on the services of the deceased and there was no evidence that she had suffered any loss resulting from his death. She was in fact the proprietor of the business, in which she employed her three children to work and for which she paid them salaries. The deceased was therefore only an employee, and whatever profits might have resulted to the proprietor from the efforts of the employee could not be considered to constitute a dependency on the part of the employer. In any case, the stall licence was in the name of the father, and cl 3 of the licence specifically stated that there should be no sub-letting of the stall, which gave the mother's business an uncertain life. There was no evidence that the deceased had given to his mother anything out of his $600 per month salary which might otherwise have been some evidence of dependency.

Section 12 of the Act is in pari materia with the corresponding provisions of the English Fatal Accidents Acts, and English authorities have formed the basis of almost all our major decisions on the scope of this section. Thus, it is pecuniary loss that the Act is concerned with. But, although it was thought at one time that for such claims to succeed there should be distinct evidence of pecuniary advantage in existence prior to or at the time of death, this has not been so since the House of Lords decision in *Taff Vale Railway Co* v *Jenkins*.[3] That case extended the scope of relief to cover even claims for the death of an infant child where there was rarely any actual dependency, so long as there was some basis of fact from which the inference could be drawn that there was a reasonable expectation of pecuniary benefits to the parent, and therefore of prospective loss from the death.

In the *Taff Vale Railway Co* case,[3] a daughter died aged 16. She was learning dressmaking at the time, was earning extremely little and was in no position to contribute anything to her parents' support. There Lord Haldane said at p 4:

> The basis is not what has been called solatium, that is to say, damages given for injured feelings or on the ground of sentiment, but damages based on compensation for a pecuniary loss. But then loss may be prospective, and it is quite clear that prospective loss may be taken into account.

Again, at p 7, Lord Atkinson said:

> I think it has been well established by authority that all that is necessary is that a reasonable expectation of pecuniary benefit should be entertained by the person who sues. It is quite true that the existence of this expectation is an inference of fact — there must be a basis of fact from which the inference can reasonably be drawn; but I wish to express my emphatic dissent from the proposition that it is necessary that two of the facts without which the inference cannot be drawn are, first, that the deceased earned money in the past, and, second, that he or she contributed to the support of the plaintiff. These are, no doubt, pregnant pieces of evidence, but they are only pieces of evidence, and the necessary inference can I think be drawn from circumstances other than and different from them.

The principle in this case has been amplified in later cases. In *Barnett* v *Cohen*,[4] it was held that the plaintiff must not prove a mere speculative possibility of pecuniary benefit, but that he has lost a reasonable probability of pecuniary advantage. In that case, the deceased son was not even four years old when he died. Upon the facts of the case, the plaintiff could not prove damage either actual or prospective, and McCardie J dismissed the claim as having been 'pressed to extinction by the weight of multiplied contingencies'. In *Wathen* v *Vernon*,[5] the deceased son was 17, earned £6.10 as a craft apprentice and out of it paid his parents £2 which probably did not entirely cover his board and lodging with the family. The Court of Appeal held that the court was entitled, and in proper cases bound, to give damages for loss of potential support, even in cases where at the time of the death no support had ever been given and the possibility of support being necessary in the future and being provided was remote. In *Kandalla* v *British Airways Board*,[6] the father brought an action to recover damages in respect of the death of his two daughters aged 31 and 27 in an aircraft accident at Heathrow in 1972. They were both doctors who worked in England, and had never supported their parents who lived in Baghdad. There was no firm evidence as to what they were earning, although their circumstances indicated that they were probably already spending up to and even beyond the limit of their existing incomes. Notwithstanding the immense difficulties in valuing any dependency, Griffiths J was of the view that:

> Once faced, however, with the responsibility for their parents, I think it can be anticipated that they would have applied their undoubted earning capacities to providing for their parents.

Two Malaysian cases were cited to me and merit careful consideration, as economic and social conditions in Singapore more closely resemble the conditions in Malaysia than those in England. In *Lee Sai Cheong* v *Wan Lim Cheong*,[7] the deceased son was 19 years old and helped in his father's business, the main work done by him consist-

ing of looking after his father's stocks of building material, for which he was paid about $200 a month. The father said that if had to employ another man to take the place of his son, he would have had to pay $400 a month, but in fact after the son's death, he had not found it necessary to replace the son with another man. On the facts, the Court of Appeal held that as the plaintiff had not suffered any pecuniary loss, he was not entitled to damages for loss of services. The court did not appear to have found it necessary to consider the question of the possibility of prospective loss.

In *Hassan bin Mohamad & Anor* v *Teoh Kim Seng*,[8] the son died at the age of 12, he did render some kind of assistance to his father in his business of selling fish at an unlicensed stall outside the Central Market in Alor Setar, but he did so only during the weekend school holidays, namely, every Friday and Saturday of each week. The father paid him $4 per day as pocket expenses but said in his evidence that he would have had to pay an outside worker $8 per day for the same work. The father admitted however that the son's help was not crucial to his business, in which his other children also helped. In the circumstances, the court was satisfied that the service rendered by the deceased son was not reducible to money value and the claims of the parents could not be entertained. As to prospective loss, the court also found that both parents had failed to prove, on the balance of probabilities, that they had a reasonable expectation of pecuniary benefit if the deceased had lived.

In the present case, in order to determine whether there has been any loss or any prospective loss to the mother resulting from the death, it is necessary to look first at the total picture presented by the facts in order to determine the nature of the working relations between the deceased and his mother. In my judgment, the proper inference to be drawn from all the facts is that this was not an employer-employee relationship, but a family arrangement of the kind which would not be uncommon with small businesses, like an ice-water stall. Accordingly, the deceased and his sisters were not true employees in the normal sense of the term as we understand it, but were in reality members of a family helping and providing services for a parent. The deceased had helped with the family stall even before he went for his national service, and the younger sister helped after school. The so-called salaries which the deceased and the sisters were paid did not reflect the true worth of their respective contributions to the business or the earnings of the stall, but were more in the nature of family allowances rather than any form of remuneration.

In my judgment, the deceased at the date of his death must therefore be considered to be contributing services to his mother which were reducible to money value and were lost to her by his death. Courts in England have for many years made awards in such cases in which the services of a deceased son or daughter have been lost to parents. Where loss or prospective loss can be proved, damages have been awarded in accordance with the same principles as in the cases where the support of a parent has been lost: the one distinguishing factor has been that the courts have recognized the possibility that an unmarried child might marry in the future and the services or support previously rendered to the parents might thereby be reduced or cease. In *Dolbey* v *Goodwin*,[9] the deceased son was 29 years old and his mother was about 53. He was steady, unmarried and without matrimonial intentions. He was living with his mother and was contributing to her support a net weekly amount of £4 or so. He was likely to recognize throughout his life his obligations towards his mother. In that case, the Court of Appeal held that sufficient weight would have to be given to the possibility that he would eventually have married and the consequent expectation of a reduction in his contribution to his mother's support.

What the court has to do in this case is to assess the money value of the services over and above the $600 salary which was paid to him, which the deceased contributed to his mother in running the stall and which she lost by his death. As Mr Tan had pointed out, there are immense difficulties in attempting an assessment, but a court cannot be deterred by this fact alone. It must make the best assessment it can on whatever evidence is available, together with such reasonable inferences it can draw, bearing in mind that what is arrived at is the accelerated receipt of a lump sum which should be discounted. The stall was turning in a net profit of $2,000 to $3,000 per month after deducting the salaries and other expenses. From this net profit, an appropriate reduction would have to be made for the contributions in services by the two sisters and by the mother herself; also, an appropriate allowance would have to be made for the fact that he lived with his mother. It might be argued that, if the stall had not been taken back by the father, the mother might have been able to find an employee to replace the deceased at no more than the same salary. That might well have been so, and indeed she might have found some one else for even less. But, in a family business, what any replacement might cost is not necessarily a reliable guide to the monetary value of the services rendered by a deceased member of the family, because the motivations are not the same.

In my opinion, it would not be unreasonable on the evidence in this case to assess a net monthly value for his services which the mother has lost at a multiplicand of $400 per month, and to apply to it a multiplier of seven years, to arrive at a total of $33,600. The determination of the multiplicand and the multiplier to be applied would have taken into account the respective ages of the deceased son and his mother, and the possibility of his eventual marriage and the consequent expectation of a reduction in

his contribution to his mother's support. Accordingly, there will be judgment for $33,600 on the mother's claim for dependency.

Section 9 of the Act empowers the court to award interest on damages. Following the current practice in Singapore courts, interest should be calculated at 3% pa on the amount of damages for dependency of $33,600 from the date of the accident, 3 June 1986 to the date of judgment.

Under s 7 and r 5 of the Intestate Succession Act (Cap 146, 1985 Ed), the mother as one of the two surviving parents would take the deceased's estate in equal proportions. Consequently, the award to her as a dependant will be reduced by the amount received by her through the estate as a beneficiary.

As the main issue in this appeal was the possible dependency of the mother of the deceased, the appropriate order would be for the plaintiff to have her costs.

Order accordingly.

Solicitors: *Goh Poh & Partners; TS Tan.*

Reported by *Mathavan Devadas*

Public Prosecutor v Ko Mun Cheung & Anor

HIGH COURT (SINGAPORE) — CRIMINAL CASE NO 17 OF 1988
CHAN SEK KEONG AND YONG PUNG HOW JJ
15 MARCH 1990

Criminal Law — Dangerous drugs — Trafficking in — Importing — Whether bringing into Singapore on the way to ultimate destination was 'importing' — Misuse of Drugs Act (Cap 185, 1985 Ed), ss 7, 18(2), 33 & First Schedule — Criminal Procedure Code (Cap 68, 1985 Ed), s 122(6) — Narcotic Control Act 1960-61 [Canada], s 5(1) — Interpretation Act (Cap 353, 1985 Ed), s 2

Words and Phrases — 'Importing' — Misuse of Drugs Act (Cap 185, 1985 Ed), s 7

The two accused were charged with importing into Singapore a controlled drug under the First Schedule to the Misuse of Drugs Act (Cap 185, 1985 Ed) ('the Act') and thus committing an offence under s 7 punishable under s 33. The first accused's defence is that he did not know he was carrying drugs in his vest. The second accused had admitted all along, that he knew he was carrying 'Pak Fun' from Bangkok to Amsterdam. He stated that he agreed and that it was his intention to carry the drug to Amsterdam but not to Singapore and that he broke his journey in Singapore for convenience and not with a view to disposing of the drug in Singapore or delivering it to any person. His counsel has submitted that he had not committed the offence of importing the drug into Singapore under s 7 of the Act but only of being in possession under s 5 thereof.

Held, finding both accused guilty of trafficking:

(1) The court did not believe that the first accused did not know what was in the 16 packets that were stitched to the vest which was worn by him into Singapore, nor did the court believe that his supplier did not tell him that he was being asked to carry drugs from Bangkok to Amsterdam via Singapore.

(2) Section 18(2) of the Act provides that any person who has in his possession a controlled drug shall, until the contrary is proved, be presumed to have known the nature of that drug. The first accused was found in possession of drugs on his body and accordingly the onus of discharging that presumption lies on him. The standard of proof is the balance of probabilities. He has failed to discharge this burden.

(3) By bringing the drugs into Singapore, even it was not for the purpose of disposing of the drug in Singapore or delivering to any person in Singapore, the second accused had trafficked in drugs by importing them into Singapore.

Cases referred to

1 *R* v *Geesman* (1970) 13 CRNS 240 (folld)
2 *R* v *Bell* (1984) 3 DLR (4th Ed) 385 (refd)
3 *R* v *Smith* [1973] 1 QB 924 (refd)

Legislation referred to

Criminal Procedure Code (Cap 68, 1985 Ed) s 122(6)
Interpretation Act (Cap 1, 1985 Ed) s 2
Misuse of Drugs Act (Cap 185, 1985 Ed) ss 7, 18(2), 33, First Schedule
Narcotic Control Act 1960-61 [Canada] s 5(1)

Seng Kwang Boon for the Public Prosecutor.
S Rajagopal for the first accused.
Tan Kay Bin for the second accused.

Cur Adv Vult

Chan Sek Keong J (delivering the judgment of the court): You, Ko Mun Cheung, Raymond, are charged as follows:

> That you on or about December 1986, at about 2.20pm at the Arrival Hall of the Singapore Changi Airport, Singapore, did import into Singapore a controlled drug specified in Class 'A' of the First Schedule to the Misuse of Drugs Act (Cap 185) to wit, 16 packets of drug containing not less than 1,133.46g of diamorphine without any authorization under the said Act or the regulations made thereunder and you have thereby committed an offence under s 7 and punishable under s 33 of the Misuse of Drugs Act.

You, An Man Keny Chiu Sum Hing, are charged as follows:

> That you on or about 12 December 1986, at about 2.20pm, at the Arrival Hall of the Singapore Changi Airport, Singapore, did import into Singapore a controlled drug specified in Class 'A' of the First Schedule to the Misuse of Drugs Act (Cap 185) to wit, 16 packets of drug containing not less than 1,127.93g of diamorphine without any authorization under the said Act or the regulations made thereunder and you have thereby committed an offence under s 7 and punishable under s 33 of the Misuse of Drugs Act.

The evidence that has been adduced by the prosecution shows that both of you, who are Hong Kong nationals, boarded a Thai International Airways flight no TG 405